

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 6, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 96-2119-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KENNETH E. HANSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Jefferson County: JOHN ULLSVIC, Judge. *Affirmed.*

DYKMAN, P.J. This is an appeal from a judgment of conviction for operating a motor vehicle while intoxicated, contrary to § 346.63(1)(a), STATS. It is heard by one judge pursuant to § 752.31(2)(c), STATS. Kenneth Hanson asserts that the state patrol officer who stopped his motor vehicle did so without a reasonable suspicion that he had committed a crime. Therefore, he concludes, the evidence of his intoxication obtained as a result of that stop should be suppressed. The trial court determined that the officer reasonably suspected that Hanson was operating a motor vehicle while intoxicated, and so do we. We therefore affirm.

The trial court held an evidentiary hearing to address Hanson's motion to suppress evidence of his intoxication. We review any facts the trial court found at the end of the hearing to determine whether they are clearly erroneous. § 805.17(2), STATS. If they are not, we will accept those facts. *Id.* But, whether a search or seizure passes constitutional muster is a question of law, which we review *de novo*. *State v. Eckert*, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996).

Trooper Gregory Jenswold testified that he was on duty at about 3:00 a.m. on October 12, 1994, when he received a call from his dispatcher. The dispatcher had received a telephone call from a person who stated that there would be a tractor-trailer unit travelling westbound on I-94 from Waukesha County to Madison and that the driver had an odor of intoxicants about his person. The caller believed that the driver was under the influence of alcohol and described the unit as a Ryder leased tractor and a Nebco Evans trailer with a brown stripe on it. About ten minutes later, the dispatcher again called and said that the person who had previously telephoned called again and added that there were two persons in the cab of the unit and that it had just left.

Trooper Jenswold was curious to know why the caller had such specific information about the unit and its passengers and asked his dispatcher. The dispatcher told Trooper Jenswold that the caller was "Judy," the dispatcher of the trucking company for which the driver of the unit worked.

Soon, Trooper Jenswold saw the unit described to him by his dispatcher. He drove behind it and saw the unit move over several feet and cross the white stripe separating the road from the right shoulder by about six inches. He testified: "At that point I noticed something that was definitely amiss." He stopped the driver, Hanson, and noticed a strong odor of intoxicants about him and that his eyes were glossy, bloodshot, and had a yellow appearance. He arrested Hanson for operating a motor vehicle while intoxicated.

Citing *State v. Krier*, 165 Wis.2d 673, 478 N.W.2d 63 (Ct. App. 1991), and *State v. Richardson*, 156 Wis.2d 128, 456 N.W.2d 830 (1990), Hanson argues that the information known by Trooper Jenswold when he stopped Hanson was insufficient to justify the stop. In particular, he contests the

information given by the "anonymous" tipster, "Judy." First, he asserts that the trooper did not know "Judy's" name or occupation before he stopped the unit. Though the trooper did not testify that he had this information before he stopped Hanson, the trial court found: "[Trooper Jenswold] satisfied himself through his own dispatcher that the information came from someone directly connected with the same unit he ultimately stopped." This finding is not clearly erroneous. The narrative Trooper Jenswold gave permitted the court's finding. Trooper Jenswold testified:

Q:And after you received the information that the vehicle in question had now left and was on its way on the roadway, how did you learn of the citizen caller's basis for knowing all this?

A:Well, of the information that was being given to us was so exacting -- that there was *going* to be two people in the cab, the color of the tractor, the fact that it was a Ryder leased tractor and not their own, the color of the trailer, the company name. And I was just curious as to how this person would know all this information. And I was *then* informed that this individual that was calling, the complainant, was the dispatcher of the trucking company.

(Emphasis added.)

The State takes issue with Hanson's definition of "Judy" as an "anonymous tipster." We agree with the State. A person named "Judy" who was dispatching trucks for Nebco Evans near Waukesha in the early morning hours of October 12, 1994, is hardly an anonymous tipster. In *State v. Kerr*, 181 Wis.2d 372, 511 N.W.2d 586 (1994), *cert. denied*, 115 S. Ct. 2245 (1995), the court said: "[W]hen an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case." *Id.* at 381, 511 N.W.2d at 589 (quoting *United States v. Phillips*, 727 F.2d 392, 397 (5th Cir. 1984)) (alteration in original).

We agree with Hanson that before a police officer may stop an individual upon the basis of a tip, the officer must have some independent corroboration of the substance of the tip. But we disagree that Trooper Jenswold did not have that information.

Trooper Jenswold was entitled to assume that the Nebco Evans dispatcher was a credible person. Hanson correctly notes that anyone might have seen his unit, called the state patrol with that information and added that Hanson was intoxicated without evidence of Hanson's intoxication. But the dispatcher was more than a random "anyone." She worked for a trucking firm that should be interested in the safety of its trailer and its contents. She was identifiable, making the possibility of a harassment call less likely. There are no special circumstances in the record which suggest that the information about Hanson's sobriety was suspect.

We conclude that Trooper Jenswold could reasonably give credence to "Judy's" belief that Hanson had an odor of intoxicants about him and that he was under the influence of alcohol. This information was corroborated when the trooper saw Hanson's trailer move several feet to its right and cross the white line by six inches, leading the trooper to conclude that something was "definitely amiss." Section 346.63(7)(a), STATS., requires that a commercial motor vehicle operator not drive while having any measured blood alcohol concentration above 0.0. A reasonable person, having the information contained in the dispatcher's message and having seen Hanson's driving, could reasonably suspect that Hanson was driving with a blood alcohol concentration in excess of 0.0 and that he was operating a motor vehicle while intoxicated. This permitted Trooper Jenswold to stop Hanson. See *Terry v. Ohio*, 392 U.S. 1 (1968). Hanson does not contest that once he was stopped, Trooper Jenswold had probable cause to arrest him. We therefore conclude that the trial court correctly denied Hanson's motion to suppress the evidence obtained after Trooper Jenswold stopped Hanson.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4, STATS.